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11
12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 THE UNITED STATES OF AMERICA,

15
16 Plaintiff,

Case No.: 2:16-cr100-GMN-CWH

17 -vs-

18 JAN ROUVEN FUECHTENER,

19 Defendant.
20

21 **MOTION IN LIMINE**
22

23 COMES NOW Defendant, JAN ROUVEN FUECHTENER, by and through his attorney of
24 record, JESS R. MARCHESE, ESQ., of the law firm of MARCHESE LAW OFFICES, PC, and
25 MICHAEL SANFT, ESQ., of SANFT LAW GROUP, hereby respectfully move this Honorable Court
26 for an Order granting their request to disallow the government from mentioning drugs or drug usage in
27 the instant case.
28

1 This Motion is based on the Papers and Pleadings on file herein, the Memorandum of Points
2 and Authorities contained herein, and oral argument, if necessary, at the hearing of this Motion.

3 This Motion is made in good faith and not for purposes of delay.
4

5 DATED this 11th day of July, 2016.

6 MARCHESI LAW OFFICES, PC

7 By: /s/
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13 Attorney for Defendant:
14 JAN ROUVEN FUECHTENER

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **Statement of Facts**

17 Jan Rouven Fuechtener is charged via indictment with one count of Receipt of Child
18 Pornography in violation of 18 U.S.C. §2252 (A)(2), one count of Possession of Child Pornography in
19 violation of 18 U.S.C. §2252 (a)(5)(B), one count of Advertising Child Pornography in violation of 18
20 U.S.C. §2251 (d)(1)(A), and one count of Distribution of Child Pornography in violation of 18 U.S.C.
21 §2252 (a)(2) and (b). He currently has a trial date set for July 25, 2016 and a calendar call date of July
22 18, 2016.

23 The instant allegations stem from an online peer-to-peer file sharing program called Gigatribe.
24 An individual using the nickname Lars45 (allegedly Jan) used Gigatribe to commit some of the
25 aforementioned crimes by downloading illegal files. The FBI used information gained from the file
26 sharing to issue numerous subpoenas to various agencies, which resulted to a search warrant for Jan's
27 residence on 7080 Donald Nelson Avenue in Las Vegas. The search was executed on January 21,
28 2016 and during that search, numerous illicit files were found on devices seized from the property.

1 As a result of the search, several items were seized and forensically analyzed. Based on this
2 analysis, several social networking communications were found of which some contained
3 communications that could be construed as pertaining to illicit drugs. In addition, there is one photo
4 of a glass pipe that was photographed during the search from an unknown location at the residence.
5 Further, there were some webcam videos of individuals using possible illegal substances on one of the
6 devices. Lastly, there was also a phone that was not Jan's (Jan only used Apple iPhones) that had text
7 messages referencing drugs.

8 This motion follows.
9

10 **Argument**

11 It is the defense's belief that the government intends to introduce evidence of drug usage,
12 possession, or purchases during their case in chief with their expert and possibly other witnesses.
13 Specifically, in their expert notice (#51), the government states that "Sargent Carry is expected to
14 provide expert testimony and explanations the language used by offenders in communicating about
15 child exploitation and corresponding drug use on various social networking and media platforms."

16 Federal Rule of Evidence (hereinafter "FRE") 702 governs the admissibility of expert-witness
17 testimony. One requirement for admissibility is that the expert's knowledge "will help the trier of fact
18 to understand the evidence or to determine a fact in issue." FRE 702(a) Essentially, this statute
19 implements a relevancy requirement. Evidence is relevant under FRE 401 if it "has any tendency to
20 make a fact more or less probable than it would be without the evidence" and "the fact is of
21 consequence in determining the action." FRE 401 Even relevant evidence may be excluded under FRE
22 403 "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing
23 the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
24 evidence." FRE 403

25 It is the defense's position that any mention of this subject matter is wholly and completely
26 irrelevant to the instant case and directly violates FREs 401, 403, and 702. The nature of the charges
27 have absolutely nothing to do with drug possession, sales, or usage. The only plausible reason in
28 which the government would be intending to introduce such evidence would be to prejudice the jury

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was motion was filed on July 11, 2016 via the Southern District of Nevada ECF system to the all following registered recipients:

Ms. Cristina Silva, Esq.
Ms. Elham "Ellie" Roohani, Esq.
United States Attorney's Office

_____/s/_____
Employee of Jess R. Marchese, Esq.